



THE INTERNATIONAL LEGAL PROTECTION OF HUMAN RIGHTS IN ARMED CONFLICT

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ABSTRACT

This research paper aimed at the exploration of international legal protection of human rights in the situation of the armed conflict. In the recent situations armed conflict has blighted the lives of millions of civilians. Serious violations of international humanitarian and human rights law are common in many armed conflicts. In certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity. Both human rights law and international humanitarian law inform each other in a number of ways. Both international human rights law and international humanitarian law provide extensive protections and guarantees for the rights of persons not actively or no longer participating in hostilities, including civilians. This paper discusses international human rights law and international humanitarian law as available for the protection of victims in armed conflict.

KEYWORDS: Human rights, Armed Conflict, Genocide, War Crimes, International Humanitarian Law.

INTRODUCTION:

In recent decades, armed conflict has destroyed the lives of millions of civilians. Serious violations of international humanitarian and human rights law are common in many armed conflicts. In certain circumstances, some of these violations may even constitute genocide, war crimes or crimes against humanity.

The International human rights law and international humanitarian law share the goal of preserving the dignity and humanity of all. Over the years, the General Assembly, the Commission on Human Rights and, more recently, the Human Rights Council have considered that, in armed conflict, parties to the conflict have legally binding obligations concerning the rights of persons affected by the conflict. Although different in scope, the international human rights law and international humanitarian law offer a series of protections to persons in armed conflict, whether civilians, persons who are no longer participating directly in hostilities or active participants in the armed conflict. Indeed, as has been recognized, *inter alia*, by international and regional courts, as well as by United Nations organs, treaty bodies and human rights special procedures, both bodies of law apply to situations of armed conflict and provide complementary and mutually reinforcing protection. Whoever in presence of modern international human rights laws we have seen lot of serious human rights violation. The Purpose here is to discuss theoretical framework for protection of human rights during armed conflict. This paper discusses the international legal protection of human rights in the situation of armed conflict. This paper provides a thorough legal analysis and guidance to State authorities, human rights and humanitarian actors and others on the application of international human rights law and international humanitarian law for the protection of persons in armed conflict.

1.1. International human rights law and international humanitarian Law in armed conflict: Legal sources.

The International human rights law is a system of international norms designed to protect and promote the human rights of all persons. These rights, which are inherent in all human beings as human being, whatever their nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, are interrelated, interdependent and indivisible. They are often expressed and assured by law, in the form of treaties, customary international law, general principles and soft law. Human rights involve both rights and obligations. International human rights law lays down the obligations of States to act in certain ways or to refrain from certain acts, in order to promote and protect the human rights and fundamental freedoms of individuals or groups. Further the international humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities, and restricts the means and methods of warfare. Its scope is, therefore, limited *ratione materiae* to situations of armed conflict. International humanitarian law is part of *ius in bello* (the law on how force may be used), which has to be distinguished and separated from *ius ad bellum* (the law on the legitimacy of the use of force).

Moreover for years, it was held that the difference between international human rights law and international humanitarian law was that the former applied in times of peace and the latter in situations of armed conflict. Modern international law, however, recognizes that this distinction is inaccurate. Indeed, it is widely recognized nowadays by the international community that since human rights obligations derive from the recognition of inherent rights of all human beings and that these rights could be affected both in

times of peace and in times of armed conflict, international human rights law continues to apply in situations of armed conflict. Consequently the two bodies of law—international human rights law and international humanitarian law—are considered to be complementary sources of obligations in situations of armed conflict. Further it concentrates on identifying the main sources of both international human rights law and international humanitarian law. Secondly, it will present and compare their main underlying principles. Thirdly, this chapter will deal with the duty bearers in both.

A. Sources of international human rights law and international humanitarian law

While international human rights law and international humanitarian law have different historical and doctrinal roots, but the both share the aim of protecting all persons and are grounded in the principles of respect for the life, well-being and human dignity of the person. From a legal viewpoint both international human rights law and international humanitarian law find their source in a series of international treaties, which have been reinforced and complemented by customary international law. Taking into account that international human rights law applies at all times—whether in peace or in combat—and that international humanitarian law applies only in the context of armed conflicts, both bodies of law should be applied in a complementary and mutually reinforcing way in the context of armed conflict.

A.1. International human rights law

The international human rights law is reflected, *inter alia*, in the Universal Declaration of Human Rights, as well as in a number of international human rights treaties and in customary international law. In particular, the core universal human rights treaties are:

1. The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol.
2. The International Covenant on Civil and Political Rights and its two Optional Protocols.
3. The International Convention on the Elimination of All Forms of Racial Discrimination.
4. The Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol.
5. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.
6. The Convention on the Rights of the Child and its two Optional Protocols
7. The Convention on the Rights of Persons with Disabilities and its Optional Protocol.

International human rights law is not limited to the rights enumerated in treaties, but also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty.

B.2. International humanitarian law

International humanitarian law is a set of rules that seek to limit the effects of armed conflict on people, including civilians, persons who are not or no longer participating in the conflict and even those who still are, such as combatants. To achieve this objective, international humanitarian law covers two areas: the protection of persons; and restrictions on the means and the methods of combat. International humanitarian law finds its sources in treaties and in customary international law. The subsequent instruments form the core of modern international humanitarian law:

1. The Hague Regulations respecting the Laws and Customs of War on Land.
2. The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;
3. The Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;
4. The Geneva Convention (III) relative to the Treatment of Prisoners of War;
5. The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War;
6. The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I); and
7. The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

Other international treaties dealing with the production, use and stockpiling of certain weapons are also considered part of international humanitarian law, insofar as they regulate the conduct of armed hostilities and impose limitations on the use of certain weapons.

1.2. Accountability and the rights of victims

One of the most significant legal obligations arising from violations of international human rights and humanitarian law is the obligation to ensure accountability for those violations. As the United Nations Secretary General has indicated, respect for the rule of law implies that “all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal assurance, avoidance of arbitrariness and procedural and legal transparency.” Moreover, in the Basic Principles and Guidelines on the Right to a Remedy and Compensation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the General Assembly recognized that the obligation to respect, ensure respect for and implement international human rights and humanitarian law implies the duty to “investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law” (para. 3 (b)). In the following sections we will address accountability for violations of international human rights and humanitarian law from the perspective of States and individuals, as well as the right of victims to reparation.

A. State responsibility for violations of international human rights law and international Humanitarian law

The State responsibility for violations of international human rights and humanitarian law has long been a foundation of international law. State responsibility stems from the principle of *pacta sunt servanda*, which means that every treaty in force is binding upon the parties to it and must be performed by them in good faith. Even beyond treaty obligations, the International Law Commission’s draft articles on State responsibility recall the general principle of international law that the breach of a State’s international obligation constitutes an international wrongful act, which entails the international responsibility of that State (draft arts. 1–2). In this context, it is useful to recall that a State is responsible for violations of international human rights and humanitarian law in the context of armed conflict if the violations are attributable to it, such as:

1. Violations committed by its organs, including its armed forces;
2. Violations committed by persons or entities empowered to exercise elements of governmental authority
3. Violations committed by persons or groups acting in fact on its instructions, or under its direction or control;

4. Violations committed by private persons or groups which it acknowledges and adopts as its own conduct.

Therefore both international jurisprudence and regional jurisprudence have established that a finding of State responsibility for violations of international human rights and humanitarian law should lead to the adoption by the State of measures to repair the damage it may have caused and to prevent future violations. Such measures range from paying reparations to the victims and their families, and giving assurances of non-repetition, to the adoption of legal mechanisms to prevent future abuses.

B. The obligations of States regarding international crimes

Where violations of international human rights and humanitarian law constitute international crimes, States have a series of lawful obligations and responsibilities that stem from international criminal law. States have the duty to investigate violations and, if there is sufficient evidence, the duty to submit to prosecution the person supposedly responsible for them and to punish the perpetrator in accordance with the law, to exclude the possibility of amnesty for certain perpetrators, and to offer remedy and compensation to victims or their families.

C. Domestic and international jurisdiction

While domestic courts have jurisdiction over violations that occurred within the territory of their own State, territory alone does not define the limits of jurisdiction. The legal obligations created by international human rights and humanitarian law have been widely recognized as extending beyond the territory of a State and to any place where the State exercises jurisdiction or control over persons. Additionally, under the principle of universal jurisdiction, a State may—and for grave breaches of the Geneva Conventions must—prosecute alleged perpetrators for certain crimes irrespective of the location of the crime and the nationality of the perpetrator or the victim. For example, Geneva Convention IV on the protection of civilians establishes universal jurisdiction over grave breaches, providing that parties to the Convention “shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches [of the present Convention], and shall bring such persons, regardless of their nationality, before its own courts.

D. Accountability of United Nations personnel

Accountability for violations international human rights or humanitarian law committed by individual UN personnel could be addressed in the same way as those committed by any other individual, with prosecution, where appropriate, in a State’s domestic courts. Such personnel usually benefit from immunities in the territory where they are deployed. However, following international human rights law and international humanitarian law principles of accountability and the Charter of the UN, the United Nations conducts internal investigations of reported violations and reports on the results.

E. Victims’ rights with respect to international crimes

As per the Basic Principles and Guidelines on the Right to a Remedy and Compensation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, victims are “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term ‘victim’ also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization” (para. 8). In addition the Basic Principles and Guidelines make clear that victims’ rights under international human rights law and international humanitarian law include an obligation on States to prevent violations from occurring and to investigate them when they do. The Basic Principles and Guidelines further state that “[t]he duty to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (a) [t]ake appropriate legislative and administrative and other appropriate measures to prevent violations; (b) [i]nvestigate violations effectively, quickly, thoroughly and impartially and, where appropriate, take action against those purportedly responsible in accordance with domestic and international law; (c) [p]rovide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, [...] irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) [p]rovide effective remedies to victims, including reparation [...]” (para. 3).

F. Other forms of Justice to address the Issue

Over the past few years, new mechanisms for accountability and victims’ right to the truth and to recompense, particularly in post-conflict situations, have evolved. Transitional justice mechanisms, for example, have been developed at the national level as means to facilitate the end of hostilities, while preserving the State’s obligation to guarantee accountability and the victims’ right to truth and reparation. Often countries emerging from civil

war or authoritarian rule create truth commissions during the immediate post-conflict or transition period. These commissions are given a relatively short time for investigations and public hearings before completing their work with a final public report. While truth commissions do not replace the need for prosecutions, they offer some form of accountability that serves the interests of addressing situations where prosecutions for massive crimes are not possible or unlikely. Furthermore other mechanisms that have been used to guarantee accountability and reparation to victims are international compensation commissions. For example, the United Nations Compensation Commission was created in 1991 as a subsidiary organ of the United Nations Security Council. Finally, another mechanism that has contributed to fulfilling the duty of States to investigate human rights violations is the creation of official commissions of investigation with a human rights mandate.

1.2. Application of international human rights law and international humanitarian law by the UN

The Maintenance of peace and preventing armed conflict are fundamental concerns of the UNO. As provided in Article 1.3 of the Charter of the UN, promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination is one of the fundamental purposes of the Organization. In this respect, the UNO has a long history of drawing on both international human rights law and international humanitarian law to protect people during times of armed conflict. It takes into account that the adoption of important international instruments on human rights, such as the Universal Declaration of Human Rights and international human rights treaties, has contributed to affirm the idea that everyone is entitled to enjoy human rights, whether in peacetime or in wartime.

A. The General assembly

The General Assembly, as the main norm-creating body of the United Nations, has since the creation of the Organization been actively involved in the development of human rights norms, including the Universal Declaration of Human Rights. The General Assembly has adopted a number of human rights principles and standards on the rights of specially protected groups. The General Assembly has also developed standards on the detention, arrest, expulsion and punishment of persons guilty of war crimes and crimes against humanity.

B. The Security Council

In the 2005 World Summit Outcome, Member States clearly recognized that "[t]he international community, through the UN, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The SC has also on various occasions condemned violations of human rights and humanitarian law in armed conflicts and called for accountability.

C. The human rights council

The mandate of the Human Rights Council consolidated the work of the Commission since 1947. Indeed, when adopting resolution 60/251 to create the Human Rights Council, the GA (General Assembly) decided to give it two core responsibilities: (a) promote universal respect for the protection of all human rights and fundamental freedoms for all, without distinction of any kind and in a fair and equal manner; and (b) address situations of violations of human rights, including gross and systematic violations, and make recommendations to resolve them. Both the Commission and the Council have time and again considered violations of international humanitarian law to fall within their mandates. The Council has further decided that "given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the [universal periodic] review shall take into account applicable international humanitarian law.

D. Treaty bodies and special procedures

Independent UN human rights experts, working in treaty bodies or as the holders of country or thematic special procedure mandates of the Human Rights Council, regularly refer to obligations of international human rights and humanitarian law in armed conflict. Their reports and recommendations help to identify and sometimes prevent violations in armed conflict.

D.1. Treaty bodies

The Human Rights Committee, in its general comments Nos. 29 (2001) and 31 (2004), dealt with the applicability of the International Covenant on Civil and Political conflict and recalled that the Covenant's human rights obligations apply in situations of armed conflict to which the rules of IHL (international humanitarian law) are also applicable.

D.2. Special procedures

Human rights special procedures have also contributed through their reports to further clarifying the relationship between obligations of IHR (international human rights law) and IHL (international humanitarian law), particularly the continuing application of human rights norms to situations of armed conflict.

E. Human rights components of UN peacekeeping missions

The UN systematically includes human rights components in its peace missions established by the Security Council. For example, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) was mandated "to assist [the Govt] in the promotion and protection of human rights, [...] investigate human rights violations [...] and [...] cooperate with efforts to guarantee that those responsible for serious violations of human rights and international humanitarian law are brought to justice.

F. Commissions of inquiry and fact-finding missions

One of the mechanisms to investigate gross violations of human rights and serious violations of international humanitarian law that the Security Council and the Human Rights Council have had recourse to is the use of fact-finding missions and commissions of inquiry. The Office of the UN High Commissioner for Human Rights is frequently asked to help establish and provide expertise to such efforts.

CONCLUSION:

International human rights law and international humanitarian law are bodies of law in permanent evolution as indicated throughout this study. Combat is a phenomenon in constant change and, thus, international human rights law and international humanitarian law are required to adjust constantly to avoid gaps in the protection they provide. Applying the rules correctly and, most importantly, providing adequate protection to populations at risk require a thorough understanding of how these different norms interact and how they complete and complement each other to afford the highest standard of protection possible. Further concerning their complementarity, both human rights law and international humanitarian law inform each other in a number of ways. As a result of efforts to guarantee effective protection for the rights of all persons in situations of armed conflict, a number of United Nations bodies and organizations, human rights special mechanisms, as well as international and regional courts, have in practice increasingly applied obligations of international human rights law and international humanitarian law in a complementary and mutually reinforcing manner.

In addition both international human rights law and international humanitarian law provide extensive protections and guarantees for the rights of persons not actively or no longer participating in hostilities, including civilians. Finally the application of both bodies of law should be carried out in a complementary and mutually reinforcing manner. Also both legal regimes provide the necessary mechanisms to ensure that victims can exercise their right to a remedy and to reparation.

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